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JOSEPH F. SPANIOL, JR.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

DALE E. FOLTZ, WARDEN
PETITIONER

v.

JOSEPH THOMAS
RESPONDENT

SUPPLEMENT TO PETITION FOR A

WRIT OF CERTIORARI

TO THE SIXTH CIRCUIT
COURT OF APPEALS

JOHN D. O'HAIR
Prosecuting Attorney
County of Wayne

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QUESTIONS PRESENTED

I.

SHOULD CERTIORARI BE GRANTED TO RESOLVE THE SPLIT BETWEEN THE SIXTH AND EIGHTH CIRCUITS AS TO WHETHER AN ACTUAL CONFLICT OF INTEREST ALWAYS EXISTS UNDER CUYLER V SULLIVAN FROM JOINT REPRESENTATION OF SEVERAL DEFENDANTS SIMPLY BECAUSE BUT FOR THE JOINT REPRESENTATION THE SPECULATIVE POSSIBILITY EXISTS THAT COUNSEL COULD SEEK TO HAVE ONE CLIENT OBTAIN A FAVORABLE PLEA IN EXCHANGE FOR TESTIMONY AGAINST THE OTHER DEFENDANTS?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

THE PEOPLE OF THE STATE OF MICHIGAN,
PETITIONER
v

JOSEPH THOMAS,
RESPONDENT

SUPPLEMENT TO PETITION FOR CERTIORARI

TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUPPLEMENT TO REASONS FOR GRANTING WRIT
BURGER v KEMP

1. Since Petitioner filed his petition for writ of certiorari in the above matter this Court decided a case on joint representation, Burger v Kemp, (No. 86-5375, 6-26-87) which is relevant to the instant petition.

2. Burger v Kemp involved an alleged conflict and actual prejudice because counsel "failed to negotiate a plea in which petitioner's testimony against Stevens might be traded for a life sentence." (p. 3412)

3. In response to this claim this Court stated "We have never held that the possibility of prejudice that 'inheres in almost every instance of multiple representation' justifies the adoption of an inflexible rule that would presume prejudice in all such cases.'" Instead, we presume prejudice only if the defendant demonstrates that counsel 'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" (Citation omitted, p. 3413)

4. This Court then held "The notion that the prosecutor would have been receptive to a plea bargain is completely unsupported in the record. The evidence of both defendants' guilt, including their confessions, and eyewitness and tangible evidence, was overwhelming and uncontradicted; the prosecutor had no need for petitioner's eyewitness testimony to persuade the jury to convict Stevens and to sentence him to death." (p. 3413)

5. The instant case is similar in that Defendant's sole claim is that counsel could have bargained for a lesser plea in exchange for testimony where the Prosecutor testified at a hearing that he would not have given such a bargain because his weaker case was against a different defendant.

RELIEF

WHEREFORE, the People respectfully request this Honorable Court to grant certiorari, or in the alternative, reverse the Sixth Circuit Court of Appeals, or remand to the Sixth Circuit for reconsideration in light of Burger v Kemp.

Respectfully submitted,
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Dated: July 31, 1987

JMJB/hdm